

Liber W.C. Court upon a bare Allegaçon discharges the sheriffe and Dismisses the accon and the pft there Remidillesse

2 M^r Hamiltons affirmacon to the Court being not upon oath, w^{ch} is rec^d as Evidence by the Court) ought not to have beene Soe received) but the Court ought to have Judged him according to the Returne of his writt and Proceeded to Amerce him & hee speakes in his owne cause to Excuse the Sheriffe from his being Amerced w^{ch} is Extra Judiciall and Illegall and Could noe way discharge him in not bringing his Prissoner to appeare according to his Returne of the Writt.

p. 174 3^{dly}. The allegation of M^r Hamilton that Perfitt was ready to pay if they would bring a bagg, Could in noe wise bee Admitted as Evidence ag^t Vanswearingen or for the Defend^t Perfitt, There being no appearance and soe noe issue Could bee Joyned, and without that the Court Could not proceed to try the Cause, but the defend^t ought to have appeared and put himselfe upon the Issue. that hee was ready to pay and had tendered the Tobacco According to his obligation w^{ch} was to bee in Caske, and that being matter of ffact it ought to have beene Tryed by a Jury for ad questionem Legis Respondent Judices as Questionem fact[i] respondent Juratores, And had the Court power att that time to have taken Cognizance of what Hamilton sayed, Yet all hee sayed Could not warrant That Illegall and Extrajudiciall Order of dismissal for That the Defend^t was ready to pay the Debt and had made Tender of the debt as the Order sayes, w^{ch} was false, Therefore the said Garret saith the said Record of the proceedings and Judgment aforesaid of the County Court aforesaid are Very Illegall Arbitrary and Erronious, And he prayeth that the said Judgment of the County Court may bee Reversed and sett aside & that hee may have Judgment for his Debt damages and Costs.

And the said William Perfitt by Henry Bonner his Attorney Prayed the hearing of the Errors aforesaid, and prayed Leave to speake to the same till the next Provinciaall Court, and itt is granted unto him the same day is given to both partyes

Att Which said next Provinciaall Court to witt the ffifteenth day of May in the fifth yeare of the Dominion of the R^{tt} hono^{ble} Charles Lord Baltemore &c Annoq Domini 1680 Came the said partyes by their Attorneys aforesaid and the said William by his said Attorney sayth. That the Judgment afores^d in the writt of Error mentioned Given by the said Court is good and effectuall in Lawe and ought not to be Reversed, for the Reasons above alleadged because hee saith 1st As to the first reason that the defend^t was Lame and not able to make his personall appeareance in Court That the Sheriffe ought to have Returned a Languidus, This defend^t saith that whether the Sheriffe bee soe bound or noe is not anything to him or his cause materiall the sheriffe being to Answer himself for what returne